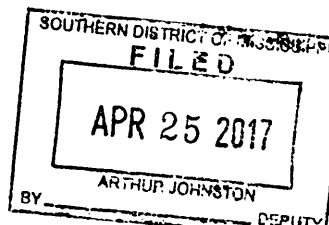


**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**JOSEPH GERHART AND AMANDA JO
GERHART, INDIVIDUALLY, AND AS NEXT
FRIEND OF BRETT MICHAEL GERHART,
IAN MICHAEL GERHART, AND SARAH
ROBILLARD, MINORS**

PLAINTIFFS



CAUSE NO. 3:11cv586-HTW-LRA

v.

RANKIN COUNTY MISSISSIPPI, et al

DEFENDANTS

NOTICE OF APPEAL

Pursuant to the applicable *Federal Rules of Appellate Procedure*, statutory authority, and governing case law, Deputy Brett McAlpin, in his individual capacity, by and through his counsel of record, hereby gives notice that he appeals to the United States Court of Appeals for the Fifth Circuit from District Court's March 31, 2017 [234] Order Regarding Various Motions for Summary Judgment, as well as any other appealable orders, decisions, or rulings affecting the rights of Brett McAlpin, in his individual capacity.

The March 31, 2017 [234] Order stated, in part, that "Plaintiffs may proceed on their claims against Deputy Brett McAlpin in his individual capacity for: Fifth Amendment violations under 42 U.S.C. § 1983 for unlawful entry; Excessive Force violations under 42 U.S.C. § 1983; and Reckless Infliction of Emotional Distress." *Id.* Because Deputy Brett McAlpin's Motion for Summary Judgment premised on qualified immunity was denied by the District Court, the decision is "immediately appealable" as it is predicated upon "a conclusion of law." *Cole v. Carson*, 802 F.3d 752, 757 (5th Cir. 2015) (quoting *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d 528, 531 (5th Cir. 1997)). The United States Court of Appeals for the Fifth

Circuit would also have pendant appellate jurisdiction over the denial of McAlpin's motion for summary judgment as to the state law reckless infliction of emotion distress claim against him. *See Morin v. Caire*, 77 F.3d 116, 119-20 (5th Cir. 1996) (It is it is particularly appropriate to exercise pendent appellate jurisdiction in cases involving qualified immunity because to do otherwise "would defeat the principal purpose of allowing an appeal on immunity issues before a government employee is forced to go to trial.").

This appeal is similar to that appeal taken by Officer Johnny Barnes, in his individual capacity, currently pending before the United States Court of Appeals for the Fifth Circuit, bearing cause number 17-60287.

RESPECTFULLY SUBMITTED, this 25th day of April, 2017.

**DEPUTY BRETT MCALPIN, IN HIS INDIVIDUAL
CAPACITY - DEFENDANT**

BY:

Jason E. Dare by MTHugh (MSB#100663)
JASON E. DARE with permission

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, JASON E. DARE, hereby certify that on this day, I filed the foregoing with the Clerk of the U.S. District Court, and sent true and correct copies of the foregoing to the following counsel of record:

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MISSISSIPPI ATTORNEY GENERAL'S OFFICE
Jackson, Mississippi

THIS, the 25th day of April, 2017.

Jason E. Dare by M.T. High
JASON E. DARE *with permission*